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IN THE

UNITED STATES SUPREME COURT 80-5385

PEOPLE OF THE STATE OF ILLINOIS,
and WARDEN JAMES GREER,
Plaintiff-Appellee-Respondents,

-vs-

DENNIS WILLIAMS,
Defendant-Appellant-Petitioner.

Re: No. 78-I-65186

1200 A.D. AD SUBJICIENDUM

PETITION FOR WRIT OF HABEAS CORPUS and
AD TESTIFICANDUM

NOW RESPECTFULLY AND URGENTLY comes the petitioner Dennis Williams and moves this Honorable Court pursuant to Title 28 U.S.C. 2241; 2254; and under authority of All Writs 28 U.S.C.1651, to issue a Writ Of Habeas Corpus Ad Testificandum.

IN SUPPORT OF HIS PETITION PETITIONER ASSERTS AND ALLEGES:

1. He is presently serving a sentence of death plus 60 years after having been "systemically framed and railroaded" in front of "dual jurys" (one composed of all Caucasian; another composed of 10 highly misled and vengeancefully inflammed caucasians, one spanish and one highly prejudiced and bias black;)

2. Petitioner's sentencing jury was also a systematic composure of all caucasians;

3. Petitioner were convicted of charges of double murder, aggravated kidnapping and rape;

4. Petitioner were sentenced to death and 60 years for alleged rape and aggravated kidnapping by Judge Dwight McKay on the 6th day of February 1979 in Harvey, Illinois' Sixth Municipal District;

5. Petitioner is presently incarcerated on death row at Menard Correctional Center - Box 711 - Menard, Illinois 62259.

(Mittimus papers is attached hereto)

Note: Even though petitioner truthfully exposes the unconstitutional composition of the jurys that claimed him guilty and the jury that doomed him to death, he's not in this proceeding of Habeas Corpus, attacking this issue, though plans to at another time.

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DEFENDANT-APPELLANT-PETITIONER'S sole purpose for bringing this petition for Writ of Habeas Corpus Ad Testificandum is as follows:

1. STATEMENT OF FACT

On June 15, 1980 petitioner filed with the Illinois Supreme Court what he truthfully and seriously termed a "Matter Of Emergency", which he asked the Court to entertain as an emergency petition for writ of habeas corpus ad testificandum.

Subsequently in June 1980 petitioner received a letter from the clerk of the Illinois Supreme Court advising him that his proceeding and another attached had been received and would be referred to the Court.

(Note: Would the Court please excuse petitioner; the proceeding referred above of being attached with the petition for writ of habeas corpus ad testificandum and issuance of subpoenas was submitted at an earlier date, approximately May 27, 1980 which is exhibit H attached hereto.)

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(See exhibit D attached hereto)

Petitioner, on June 25, 1980 received a letter (exhibit E) from the clerk of the Illinois Supreme Court advising him that his petition for writ of habeas corpus ad testificandum and request for the issuance of subpoenas had been denied. There was no written opinion giving any basis for denial, it was just denied.

This June 23, 1980 letter (exhibit E) also advises the petitioner of a motion denial with referrence to his attempt to have the Illinois Attorney General, William J. Scott, vacated from the representation of the People of the State in petitioner's appeal or any involvement whatsoever in the disposition thereof petitioner's case.

The grounds that gave rise to such motion was the fact of the Attorney General, William J. Scott, being convicted of a felony whereof he breached the public trust and loyalty, thus his continuance of service in the office prejudiced petitioner with respect to due process, equal protection of the laws, fundamental fairness and several other constitutional rights. This motion (see duplicate, exhibit H) was also denied without opinion or basis from the Court. (see exhibits E and F attached hereto)

Just recently, subsequently, to the denial of this said motion the Illinois Attorney General, William J. Scott, reportedly received a sentence of one year and a day for his Jury conviction on tax fraud. According to public information the Attorney General has filed appeal and is free on bond. On June 25, 1980 petitioner prepared and forwarded the clerk of the Illinois Supreme Court a letter (see exhibit G) asking for rationale and information on the denial of his proceedings, only to the avail of a fruitless explanation (see exhibit F).

2. STATEMENT OF FACT

As petitioner asserts in his previously submitted formal petition for writ of habeas corpus, there has arisen new witnesses and evidence in the case now shammed against petitioner and his three (3) other co-defendants whom as well protests their evident innocence.

Since petitioner's incarceration on death row he have protested his innocence very vigorously, however to no avail or serious attention. If petitioner correctly recalls, sometime during the Fall of 1979 in the proximity of months August and September he was visited by two family members, one Vella Gaines (sister in law) and James Williams (brother) at Stateville Prison located in Joliet, Illinois; petitioner's brother James told petitioner that he believed he had discovered some information leading to the murders and kidnapping of one Larry Lionberg and one female Carol J. Schmal, both of whom was reportedly kidnapped from a 24 (twenty-four hour) service Clark Gas Station in the surburban village of Homewood, Illinois, on May 11, 1978, reportedly.

The effect of petitioner's brother's statement was that a possible drug pusher or drug affiliated man named Dennis Johnson, told him and petitioner's co-defendant's (Willie L. Rainge)'s mother Mrs. Georgia Beamon and Aunt Virginia Hawkins that he, (Dennis Johnson) knew who "shot them folks" and where the gun was that was used in the murders of Larry Lionberg and Carol J. Schmal. Petitioner's brother also stated to the effect, "Dennis Johnson was talking but scared to come to Court to repeat what he was saying in front of a Judge, and thought he should be protected and paid before he risked dying." Petitioner's brother also relayed that Dennis Johnson gave some discription of the automobile used to escort said decedents (Lionberg and Schmal) to their demise.

Petitioner, afterwards, told this information to his Appellate Attorney, Martin Carlson and Mr. Carlson supposedly relayed this information to Deputy Defender-Attorney Ralph Ruebner and then on to their investigator, Leo Ranachowski. Petitioner was as reiterated, sentenced to death and 60 years on the 6th day of February 1979; the day afterwards (while being held over in the Cook County Jail at Chicago for scheduled transfer to the Penitentiary at Joliet) petitioner was visited by court appointed Counsel for appeal-Ralph Ruebner and his Investigator Leo Ranachowski, and present was also co-defendant Willie L. Rainge with petitioner. Petitioner and co-defendant at this time encouraged both legal consultants that this case ought to be investigated and expressed they were innocent and that the State's case was a "Scandulous and blood-thirsty Mockery of Justice and a Sham to the Judicial System."

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them; did not make effective arguments and motions against the selections of the jurys-both trial and sentencing; that the verdicts was not based upon common sense and logic, but rather prejudice, vengeance, passion and minds fogged with prosecutorial-illusions and misjudgment; and that the State's theory of the case sounded like,something like an "incomplete Dick Tracy episode." Rather, purely "absurd." After Mr. Ruebner's attentative recollection of petitioner and co-defendant's detailing of the methods by which the State tried its case, he stated that he'd go over the transcripts, reports and other documents and "get into the case" and would, if he found evidence in the transcripts supporting defendants' contentions, he'd have his investigator Leo Ranachowski to look into the case. Thereafter Mr. Ruebner and Ranachowski departed, petitioner and co-defendant returned to their holdover cells of the Cook County Jail at Chicago.

3. STATEMENT OF FACT

Since the approximate first part of September 1979 til the present time petitioner have begged and pleaded with his Appellate Attorneys Martin Carlson and Ralph Ruebner and demanded that they have Investigator Leo Ranachowski to investigate the newly arising evidence and talk with people containing relevant information. Petitioner's request have been ignored and nothing to his knowledge done about the newly arising evidence and witnesses in the case.

From September 1979 til now it have appeared that Appellate Attorneys Ralph Ruebner and Martin Carlson and their Investigator Leo Ranachowski have been deluding or playing the petitioner off: We're gonna have Mr. Ranachowski look into these things, Mr. Williams. This type of promising and no action have infuriated petitioner with great anger, mental anger, frustrations, disencouragements, tensions and arguments with Counsel. During the early portion of August 1980 petitioner had occasion to call Mr. Ranachowski and inquire to him of what he had done relative to investigating the issues arising the case; Investigator Ranachowski claimed that he hadn't had the opportunity to attend the matters of the case and that he would have the case investigated by the end of the month. Petitioner do not have confidence that Mr. Ranachowski will live up to his word.....so far he haven't for approximately 8 months or more. So, there's nothing to convince petitioner that he will now.

Mr. Carlson has told petitioner for at least 20 times that Mr. Ranachowski has a large number of other cases to investigate and is quite occupied. Petitioner have asked Mr. Carlson repeatedly to submit an affidavit and to ask one from Mr. Ranachowski stating that their investigating facility was inadequate to pursue an effective investigation into the petitioner's case and that he, Mr. Ranachowski, was heavily occupied with other cases, other than the petitioner's and obviously the Appellate Defender Office could not fullfill petitioner's quest for a probe into the case. Petitioner stressed that he needed the affidavits for exhibits in this petition for habeas corpus ad testificandum as part of his efforts to convince the Court that it should entertain the request herein for appointment of investigator of petitioner's choice whom could render adequate service in conducting an investigation into this case. Mr. Carlson, Ruebner and Ranachowski have all failed to submit petitioner an affidavit reflecting the inadequacy in the Firm for investigations into cases, specifically petitioner's case.

4. STATEMENT OF FACT

Approximately May 1st or 2nd, 1980 petitioner received a one paged letter from his brother James Williams. Excluding other contents of the letter, petitioner's brother, in the bottom portion of the letter, had this to say, -quote- Man, that motherfucker D.J. and his boys got together and went over to Virginia house, broke in, beat her mom bad and luxkput her in the hospital, she out now and file charges against the motherfuckers but as you would know with that sorry ass cust hts. making the arrest and report that the mrs would get off. In case you have forgotten who Virginia is that Tuna Aunt that live across the street from his mother. So the shit just got so bad with the threats and all she had to move from out there. -unquote-

this party Dennis Johnson obviously knows something he've told Mrs. Hawkins have gotten out to other people and this attack upon Mrs. Hawkins by not only Johnson but his "boys" tends to indicate that all was involved in the commissioning of said kidnap-murder of Larry Lionberg and Carol J. Schmal; and if not, they very well must know who did commit the crimes. Considering the fact that Johnson and "his boys" beat Virginia Hawkins to the point of hospitalization, and in addition to that petitioner's brother have relayed to petitioner that this Johnson told Mrs. Hawkins something to the effect, "You don't keep your goddamn mouth shut you're gonna come up misssing!"

As it is shown in Mr. Williams letter at the bottom, things, the threats and all got so bad Mrs. Hawkins had to move because she apparently feared her life being taken. Petitioner, after reading this letter called his Attorney Martin Carlson and told him about the attack upon Mrs. Hawkins, however Mr. Carlson, nor Mr. Ranachowski made any attempts to protect the life of Mrs. Hawkins and look into the motive and conduct an investigation. Seeing the Attorneys wasn't making any advancements upon this matter, petitioner called Counsel Carlson and had a heated profane filled conflict with him.... again to no avail. Time after petitioner argued with his Counsel..... still to no avail.

On approximately June 17, 1980 petitioner was visited by Deputy Counsel Ralph Ruebner and one other Appellate Defender Investigator Durwood Q. Hurst of Mt. Vernon, Illinois. At this visit petitioner spoke briefly with Mr. Ruebner (approximately 1 minute); Mr. Ruebner then went into another visiting room (at Menard Prison now, after petitioner was transferred from Stateville on June 12, 1980) and commenced conferrence with one John Gacy whom he represents on appeal. During the visiting hours (approximately 1 hour ½) petitioner had his transcripts in the visiting room with Mr. Hurst going over certain suspicious testimony of the States Attorney and one of their so-called "witnesses" whom by bribery and a deal lied on petitioner and his co-defendants at the trial and sentencing hearing. This "witness" is named Charles McCraney whom further received a job from the State as a security guard evidently for receipt of his lies on the petitioner and co-defendants. Petitioner and Mr. Hurst combed the transcripts and afterwards Mr. Hurst said to the effect, "You're right, Dennis, this is a strange case, reflects no motive, no evidence; and as intelligent as you are, I can't see you killing these two people and might as well, as you said, "lay them in your backyard."

Mr. Durwood Q. Hurst took notes from the petitioner and from the transcripts. He said he would go over the material after he got back to his office. After the visiting sessions was over petitioner again spoke with Mr. Ralph Ruebner about the case, additional to the brief conversation petitioner brought up the unconstitutional jurys composition that passed judgment on him; Mr. Ruebner stated that I should discuss this issue with Mr. Carlson whom is the Appeal Assistant Attorney responsible for preparing the brief on appeal. While leaving Mr. Ruebner told petitioner, "Okay, Mr. Williams, we'll see ya, and I'll talk with Mr. Carlson." Some weeks later petitioner called Mr. Durwood Q. Hurst and inquired of any possible success in investigating the case. Mr. Hurst stated that the matter was out of his jurisdiction and he only took the information because he was closer to my place of incarceration than Mr. Ranachowski, being the fact that petitioner is approximately 360 some odd miles from Chicago, resultive of the transfer of petitioner to Menard Correctional Center which sits on the Southern tip of Illinois. In fact, all of petitioner's family and loved ones and family's relatives lives in the vicinity of Chicago.

Investigator Durwood Q. Hurst told petitioner that he had turned the subject information over to Investigator Leo Ranachowski back at Chicago's State Appellate Defender Office for him to deal with: the very same Investigator that wasn't doing anything in the first place and had the relevant information already, in fact for months. Petitioner grew very angry at this and gave up on the Appellate Office and their Investigators and now pursues this petition for higher Judicial attention-hoping that his prayers for an investigation is

considered and answered, since the Illinois Supreme Court has no

illegal holding of him in prison and threats of electrocution is nothing short of a "mirage of justice and irreversible offense to the United States Constitution and its legal spirit in the application of justice and the overall recognition of civil rights, especially of the wretched, the underprivileged, the impoverished, those of color whom are many times swept up and devoured as the petitioner has been, those whom stand without moral, cultural and social solidarity, the vulnerable and the innocent-targets of covert and overt injustice and malicious prosecution, arbitrary and capricious insults.

In the below statement of fact is cited excerpts of the prosecution's testimony and their so-called witness, Charles McCraney:

5. STATEMENT OF FACT

Petitioner was called to testify in a preliminary hearing in the Circuit Court of Markham, Illinois before one Judge Richard Samuels on June 19, 1978. In a line of questions propounded by one prosecutor Clifford C. Johnson to petitioner, he was asked the below questions:

etc., etc., etc.

MR. JOHNSON: Q. Now, do you know Galen Strange?

A. No.

Q. Have you ever heard the name?

A. No.

Q. You never known that man before?

A. No.

Q. Do you know him by a different name?

A. No.

Q. Within the last six months to a year, have (proceeding from page 166 to 167 of the preliminary hearing transcript)

you met Galen Strange?

A. No.

Q. Did you ever have a conversation with a fellow who cnught two to six in Harvey for dealing dope?

A. No.

MR. CRESWELL: Let the record show I am making an objection to this line of questioning with referrence to my client, Kenneth Adams.

THE COURT: Objection sustained.

MR. JOHNSON: One second, Judge.

MR. WESTON FOR WILLIAMS AND RAINGE: Your honor, for the record, I am joining in all objections made by my co-Counsel in this matter, on behalf of my defendants.

Note: This line of questioning by the prosecution seems to lead one of common sense to believe they have not solved the crime, but rather have brought individuals before the Court trying to build a case or insinuate one out of nothing; thus, it is to be considered that the prosecution must have some information which he's not telling the defense Counsels about the deceased and the State's investigators could very well be witholding information to protect some organized crime figure or drug cliche of high notoriety. The reason for believing this will be shown in the following excerpts:

These excerpts are being cited from transcript volume 1 of the trial

Gray and Kenneth E. Adams:

MR. WESTON: As I understand it, we were supposed today (9-14-78) to complete discovery procedures. I filed a lengthy motion for discovery and among the items is the State contending that they've supplied me with all the requested discovery?

PROSECUTION, MR. ARTHUR: Yes. (We're on page 4 of volume 1)

MR. WESTON: Your Honor, specifically in number twenty-one of my request for discovery involved information whether or not the deceased had participated as a State's witness in a narcotic trial almost immediately prior to the death thereof. In addition thereto other specifics in number twenty-one. I want to be sure that the State has supplied me with this because I haven't had an opportunity (proceed to page 5 of volume 1) to read the voluminous documentation given to me today.

THE COURT: Well, which deceased are you referring to?

MR. WESTON: Both of them. Lawrence P. Lionberg.

MR. ARTHUR: Judge, to clarify that as well as another matter, first of all with respect to what Counsel is asking, of course that is not provided. That's unprecedented in discovery rules. If the Court felt, of course, that was relevant, I don't see how it could be relevant, but we would certainly comply. We have indeed made inquiries, your Honor, based upon that request and to our knowledge Mr. Lionberg was never a witness on behalf of the State in any drug transaction.
Furthermore, your Honor (Judge Dwight McKay), there is also a request by both Counsel in their motions for pretrial discovery as to whether or not any of the persons listed on the State's answer to discovery have any prior provable convictions. There is a possibility, your Honor. We at this point do not know but there is a possibility that a man listed on our original answer to discovery, our original list of witnesses, a person by the name of David Jackson (proceed to page 6) may or may not. We don't know but we will know by the end of today and that will be provided to Counsel immediately.

Comment by petitioner, off the record into this petition: It appears as if the State tried above to evade the curiosity of Counsel being inquirive of the deceased being informants in a drug case almost reportedly immediately prior to their deaths; the Prosecution starts to elaborate upon an irrevelant matter concerning one of their conspiring witnesses whom lied on the petitioner and co-defendant Rainge in the trial, David Jackson. When this Jackson testified against defendants in trial he confessed to being a burglar on the stand. The State also subsequently, in a "deal", let Jackson off with probation and extension of parole to the state of Iowa. In short, the State's elaboration to Counsel Weston's inquiry was an "evasive absurdity." As is reflected on page 10 of volume 1, the State rushed petitioner to trial unprepared and without the Due Process Benefits of discovery:

THE COURT: Are you ready for trial now.

MR. WESTON: No, I'm not ready for trial, your Honor.

THE COURT: You're not?

MR. WESTON: Why should I be ready for trial. No one advised me to come in for trial. This was to argue this motion and complete discovery. They haven't done that. In order for me to enforce my discovery it's necessary now that I bring up some law that pertains to t[illegible] that which I've requested. They haven't given it to me.

(Proceeding to page 12, center thereof)

MR. WESTON: Based on you giving me the balance of my discovery and based on you making that representation to the Judge himself, and you've done neither. How am I going to trial. You haven't given me completed discovery. You gave me stuff right now, Ccunsel, the balance.

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MR. WESTON: I should read it during the trial?

MR. JOHNSON: You're the one who is demanding trial, Counsel.

MR. WESTON: I made no demands.

(Reviewing page 35 of volume 1)

MR. WESTON: Then I'd respectfully suggest to the Court that Counsel has not advised at anytime this would be a trial date on the last hearing. They said specifically to come back here for discovery. I'm not prepared for any trial. I have a number of witnesses I want to bring in here. They haven't given me one minute's notice other than right now.

THE COURT: Well, right now we're going to start picking a jury, Mr. Weston.

MR. WESTON: I shall not participate. Don't you think my people deserve some notice. The Court should give me some notice that we're going to trial, at least twenty-four hours ahead.

THE COURT: I'm taking the position as you've indicated that you've always been ready and demanded trial.

MR. WESTON: I'm making a representation to the Court again. I didn't indicate that the last time before I was before the Court. I'm not indicating it (proceeding to page 36 of volume 1) now. I haven't completed my discovery for this young lady. (With referrence to female defendant Paula Denise Gray) You just denied her bond just now.

THE COURT: Right.

MR. WESTON: Why should I go to trial with her. For what, because the State is ready?

THE COURT: I'm not her lawyer.

MR. WESTON: I'm the defense lawyer and I'm not ready. I'm not going to any trial. I'm not prepared. My witnesses are not here. If the Court directs me to sit here and remain moot, I'll do so.

MR. ARTHUR: The half sheets will reflect and the common law record would also reflect that Counsel has answered ready for trial and demanded trial since September 1st on all of his clients. The State is ready now.

THE COURT: Get the jurors.

MR. ARTHUR: Thank you. Judge, it will take about fifteen minutes to get them over here. Can we take a break?

THE COURT: All right, we'll recess.

(Whereupon a recess was taken, after which the following proceedings were had:)

MR. JOHNSON: Judge, there's a few matters prior (proceeding to page 37 of volume 1) to the selection of the venire that we'd like to get into. etc., etc., etc.

(Bottom of page 37)

MR. WESTON: Wait, wait, wait, Counsel. In terms of agreement--

MR. CRESWELL: We're not agreeing to anything.

MR. WESTON: I don't agree with this entire procedure.

THE COURT: Well, that I understand. You've stated that clearly.

over the discovery materials, expressed to the Court repeatedly that the defense could not be prepared, as a result of the State waiting til the day of trial and giving Defense Counsel completion of discovery materials. However, the Court concurred with the State's demand for trial. This action struck the defense, helpless, like an "atomic explosion" ineffectuating the defense overwhelmingly.

Further, by citation of excerpts, the petitioner shows from volume 1, starting at page 40, that the State forced the Defense to trial without notice for want of specific date of trial-additional to refusing compliance thereto discovery rules and due process, knowing the potentiality for asking for the death penalty on petitioner and co-defendant:

(Volume 1, page 40)

MR. WESTON: Your Honor, might I state that the position that I feel I'm in now, the Court has ordered me to trial on the people I represent. Now the State is arguing contrary positions. One says they should be tried together and the other says they should be tried seperately. I indicate neither should be tried at this point because a number of rights of these defendants is being denied because there's been no preparation by defense counsel. None. None whatsoever.

I was given a list of witnesses today. Now, (proceed to page 41) this is a supplementary list of witnesses. I might refresh the Court's recollection, if I might, the Dfense is entitled to reasonable notice to the State to interview, to take statements from respective witnesses within a reasonable guidance by the Court and a number of other factors. I don't see how we could possibly conduct a trial and I could put up any defense for either of these defendants under those circumstances. It wasn't placed on a trial call. It was placed for a continuance date. It was here specifically to complete the discovery and to say at the discovery date we're going to trial right now for whatever reason the State wants to do it, I'm not prepared to do it. I can't do that. Can't do it. I refuse to do it.

Aside from any statement you make, Counsel, aside from that--

THE COURT: Are you making a motion for a continuance?

MR. WESTON: I'm making an argument now about--

THE COURT: Your argument is that you want a continuance?

MR. WESTON: If the Court wants to phrase it that way, say it is a continuance. But I was here today.

(Petitioner now directs attention further to page 42 of volume 1)

That's the Court's words, not mine. We're here today specifically for discovery.

THE COURT: I'm asking you if you are asking for a continuance.

MR. WESTON: I'm asking that the Court set a trial date at one time or the other.

THE COURT: I set it today.

MR. WESTON: You set it today and that's the type of notice that I get. That's what you're saying.

THE COURT: Well, maybe so.

MR. WESTON: Now, might I cite a couple things. The Defense is entitled--

THE COURT: All I know is that Mr. Creswell is not asking for a continuance.

MR. WESTON: I don't know what Mr. Creswell is doing. I just represent three defendants. (Willie L. Rainge, Paula Denise Gray and Dennis Williams)

9.

Note: For the Court's better understanding of what happened with the trial issue, please see attached section of petitioner's Oral Argument pertinent to appeal before the Illinois Supreme court, submitted as an exhibit hereto in evidence of petition.

MR. WESTON, PROCEEDING: The defense is entitled to a reasonable time for preparation. People versus Lewis, 17 Illinois Appellate Third, 188, 1974.

When did you tell me all this started, Mr. Creswell?

MR. JOHNSON: May 15th.

MR. CRESWELL: May, your Honor, is when the defendants were taken into custody.

MR. WESTON: To the exclusion of Miss Gray.

MR. CRESWELL: To the exclusion of Miss Gray, yes.

MR. WESTON: And there's even a Federal case, U.S. Ex Rel Williams versus Toomey, 510 Federal Second, 632, Seventh Circuit, 1975 in which failure to request a continuance in the circumstance that the Court is alluding to was held to constitute ineffective representation by Counsel. I don't want to be placed in that type of position where I'm given a partial answer to discovery on one day and five minutes thereafter forced to trial because I'm not prepared.

MR. JOHNSON: Judge--

MR. WESTON: And I think I'm entitled to at least a date set for trial, at least a date if nothing but twenty-four hours. I have witnesses too.

MR. CRESWELL: Judge, may I ask the Court something before he goes on.

MR. JOHNSON: May I respond to Counsel?

MR. CRESWELL: I just want to ask a question, please. Do you have the court file here, your Honor, for the last date it was up?

THE COURT: No.

MR. CRESWELL: Could we get it from the Clerk?

THE COURT: Sure.

ETC., ETC.,

THE COURT: They're all (with referrence to defendants Rainge, Williams and Adams) in the same position except maybe the girl.

MR. JOHNSON: With respect to what?

THE COURT: The girl that's indicated.

MR. JOHNSON: With respect to what position?

THE COURT: That's recent.

Note: What the Court refers to as being "recent" is the fact that petitioner's co-defendant Paula Denise Gray was indicted by a grand jury, "JOHN DOE GRAND JURY", on September 1, 1978 on alleged charges identical of the men defendants: murder, aggravated kidnapping, rape, armed violence and additionally perjury for recanting a "created confession" investigators threatened and forced her to sign; and now the State, 13 days later, force the position of trial on the three males and the young lady whom was also being represented by Attorney Archie B. Weston Sr., and Kenneth E. Adams whom Mr. James Creswell represented. Fact is, as I assert this as statement of fact, the term (120 day had expired on Adams) on this day September 14, 1978; the State used the girl's subornated and perjured confession and brought her Jury, during the trial, in the Courtroom with petitioner's and his co-male defendants Jury for intentional prejudice of the case and inducement of misleading concepts of the case; as the State would not had had a case (still don't) if they would've discharged Adams, never indicted the girl for her perjured testimony's usage. With Rainge and Williams alone, the case was "groundless", in fact is now. 10

Another statement of fact is that, being the girl was represented by same Counsel as Dennis Williams, a Bruton Situation arised; complete loyalty of Counsel to petitioner hereby became inevitable and Counsel by taking up the position of of representing Miss Gray violated the ABA Code of Professional Responsibility, EC 5-14 (1975) and fell ineptly violative of the ABA Standards For Criminal Justice, in re: to the Defense Function, Sec. 3. 5 (b) (1974). Petitioner considers this factor evident of the State rushing trial to conceal the truth of the case: Defendants was and is innocent.

THE COURT: Mr. Weston's other two defendants have been in the same length of time as Adams.

MR. WESTON: I made no demand at that time, your Honor.

MR. ARTHUR (PROSECUTOR): Until September 1.

MR. JOHNSON: We believe Counsel's demand, you (proceeding to page 45) know, it's our opinion that we believe Counsel's demand ran from the first time it was on the preliminary hearing call over there.

MR. WESTON: Who Counsel?

MR. JOHNSON: Mr. Creswell.

THE COURT: That's what I believe.

MR. JOHNSON: In other words, after the case was continued off the bond hearing, whatever date that was in May, that's the commencement of the term. But it's obvious what counsel are doing, you know, representing independent clients, you know, whether it's consciously or unconsciously the State is being whipsawed. The term is imminent we believe with respect to Mr. Creswell's client. Now, the State can't be put, nor the Court be put in a position where on the one hand you got a fourth term motion coming up on the horizon and on the other hand counsel now, after demanding trial, indicates that he's not ready.

THE COURT: We're going to trial, there's no use discussing it.

MR. WESTON: Again for the record, Counsel has not demanded trial on the defendants, plural, involved therein.

(Page 46, volume 1)

MR. ARTHUR: He has since September 1. The half sheets will reflect it, Judge. He said he was ready for trial. He knew there were witnesses in this case that if he says he would like to interview those witnesses I'm sure that he has not all of a sudden today determined that he'd like to talk to them. He's been an attorney much longer than I and he said he was ready as of September 1, Judge. Today is now September 14th and I can't see how he can be ready the first and not the 14th.

MR. JOHNSON: What's changed other than the State answering ready for trial?

MR. CRESWELL: Here's the half sheet, Mr. Weston.

MR. WESTON: Yes, I know. So, where is the order for trial?

MR. CRESWELL: I just thought I'd point that out to you in case you wanted to apprise the Court of that last week, that it was motion of State to today to complete discovery. I thought maybe you wanted to point that out to the Court. That's what the official court file reflects.

MR. WESTON: I said that three times. Though the record doesn't bear it out.

THE COURT: Well, let's get back to this problem (proceed to page 47) of conflict.

(Viewing page 48 of volume 1)

MR. ARTHUR: We are. We're ready on all four.

MR. JOHNSON: It's just the only way to try them.

Note: Here in the two above quoted excerpts, the two prosecutors displays their weakness in the case and admits that the only way they could try the case was take Miss Gray right along, unprepared, thus knowing that she would directly serve adversity to the defense, thereby deprive petitioner of a fair and impartial trial and the benefits of discovery under Brady.

On page 49 of volume 1, Counsel had the following to stipulate into the record, Counsel Weston, I refer to:

and I'm here. I had no opportunity to speak to these people. I would ordinarily had prepared them for trial had I been advised there would be a trial.

5. STATEMENT OF FACTS

Petitioner's brother James Williams, Georgia Beamon, Virginia Hawkins, Paul Jimerson and possibly other people are willing to testify before a court to things concerning the injustice that placed petitioner behind bars, however many are afraid of sending affidavits to prison in mail to the petitioner, because all of petitioner's social mail is read by the Menard Correctional Center's Administration, the same fear is bored with referrence to the material getting back to the State before reaching the Court, and as a result the State retaliating and or launching hindering measures upon the petitioner's struggle to prove his innocence and expose their outward tyranny in the trial court-where the petitioner "had no rights the particular Authority was bound to respect." This is the reason petitioner needs, very seriously, the U.S. Supreme Court to appoint him an Investigator and an competent attorney of his choice to take up his rightful struggle in this post conviction petition. Petitioner simply cannot effectively pursue this litigation and meet its full requisites without said assistance.

From reading his transcripts the petitioner is compelled to believe the State is obstructing justice, attempting to commit murder by false prosecution, and that the State is protecting some vicious drug cliche or mob; and I assure the Court that You will likely adopt the same belief after reading the following cited excerpts from transcript volume 3-where one of the State's bribed witnesses, Charles McCraney, stated some businessman tried to bribe him, one Joe G. Esposito. Macraney also testified in the trial that he, on the night of the reported crime, heard only one shot in the entire night of May 11, 1978, in the vicinity adjacent to his home, where the crime reportedly took place and the two decedents were found shot to death. Testimony from doctors, forensic scientists and investigators for the State, at the trial, stated that decedent Larry Lionberg's death was the result of two gunshots to the head, one gunshot wound to the heart; decedent Carol J. Schmal's death, reportedly, resulted from two gun shot wounds to the head; alright now, being this the case, any person of common sense would ask "Why didn't Mr. McCraney hear 5 (five) shots, especially when the State produces the "created" confession of Ms. Paula Denise Cray alleging that Ms. Schmal was shot twice in succession or rapidity thereof discharge of gunfire and Lionberg, approximately and allegedly in the bizaare confession, 3 to 4 minutes afterwards, shot 3 (three) times also-one shot right after the other?" And McCraney, by his testimony, only heard one shot..... Petitioner don't believe any rational man would be too naive to conceive that this confession was a notorius lie created by the Investigators, and so was McCraney's tale a conspiratorial and subornated lie.

This type of deceit and injustice have sent a many man, innocently, to their death by hangings, burnings, guillotine, garotte, gas chamber and the electric chair, and it is a shame to humanity when a 34 year old man would lie on 4 (four) innocent people, causing one to receive natural life in prison and the other sit and wait to be shocked to death, for obviously a few dollars the State stuffed in his pocket, a job as a security guard with relocation into a "new apartment." This type of business, if not reversed and dealt with by judicial fairness, would "spill the blood of Dennis Williams on the Constitution of Illinois and the United States".

Would it now please this honorable Court to view the below cited excerpts:

(Volume 3, page 1193, first 1192)

MR. WESTON Q: Now, have you had an opportunity to talk to the State's Attorney since you were on the stand last?

MR. McCRANEY A: Talk to them about this case?

Q: Yes, sir.

A: No, sir.

Q: Did you discuss with them the feasibility of replacing your Eldorado?

Note: The issue on these two cars arised as a result of McCraney alleging someone had, prior to the trial, put sugar in the tanks of his subject autos, thereby allegedly causing destruction and or impairment in operation, assumedly.

MR. McCRANEY A: Eldorado and a Mustang. No one was promised to replace it. However, I was approached by a man that wanted to bribe me.

 (continues on next page),

A: Joe Esposito. I got his card. He wanted me to have amnesia if the State's Attorney subpoenaed me in this court.

Q: Who is he, sir?

A: I don't know. His boss didn't want me to testify here.

Q: What's his name?

A: I'll spell it in a few seconds. Middle initial G. Esposito; E-s-p-o-s-i-t-o. And he wanted assurance, His boss wanted assurance that I wouldn't be here.

Q: His boss. Who is his boss?

A: I don't know. If the State's Attorney subpoenaed me here that I would have a case of amnesia.

Q: Where did you see this Mr. Esposito?

A: He came to my house. I wasn't there so he left his card with my wife and had me call him. He said he'd be in the office until nine o'clock. I have his phone number and everything here.

Q: Can I see it?

A: Yes, you can have it.

Q: Now, when you say he came to your house, did he come to the place where you're located, relocated?

A: No, this is before.

Q: So, when did you see him?

A: About a month and a half after the crime had taken place. He had got my address through the police department. He looked at the sheet or something he told me.

Q: Oh, so that was a month and a half after the crime was committed?

A: That's correct.

Q: Right. Was that after you had told -- looked at the pictures?

Note: With referrence to pictures of Dennis Williams, Kenneth Adams and Willie L. Rainge.

A: No.

Q: That was before you looked at the pictures?

A: Right.

Q: That's before you told what you're saying now?

(On page 1195)

A: That's correct.

Q: So, prior to that you said you didn't know who the people were, is that right?

A: The police were dragging their heels in finding me somewhere to live.

Q: I say prior to that you told the police you didn't know who the people were?

A: Correct.

Q: So, this fellow wanted you not to come to court and tell that you didn't know who they were, is that correct?

A: Rephrase the question again.

Q: He wanted you to come to court and not tell or not come to court and tell what you didn't know who the people were?

 (continues on next page),

A: He wanted me to come to court and not be able to identify anyone.

Q: But you couldn't identify anyone from the police reports, is that right?

A: That's correct.

Q: Did you tell the State's Attorney about this Mr. Esposito?

A: Yes, I did.

(Now, citing from page 1196)

Q: When did you tell them that?

A: Two or three days after he had contacted me.

Q: So, about a month and a half after the crime was committed you had told the State that someone had attempted to bribe you?

A: That's correct.

Q: Who did you tell in the State's Attorney's Office?

A: Cliff Johnson.

Q: Where did you tell Cliff Johnson this?

A: I called him and told him.

Q: You telephoned him?

A: Yes.

Q: Did he arrest the young man to your knowledge?

A: Not to my knowledge.

Q: Did you hear anything else about it?

A: No. I assured the young man that I wouldn't be there, though, over the phone. He said, "Well, this is easier than I thought it would be."

Q: Did you tell the State's Attorney that?

A: Yes.

Q: What you just said?

A: Yes.

Q: The same State's Attorney, Mr. Johnson?

A: That's correct.

Note: As McCraney said, the State never made any effort to do anything about the Attempted bribery on him. Petitioner was then, and is now compelled to believe that this Joe Esposito is somehow an organized crime figure, thus familiar and works with the State's Attorney's Office. This Esposito, whoever he is, reportedly even went to the police department department and obtained McCraney's place of residence, which could have or did place McCraney in great danger of losing his life. The State, however, tried to insinuate 4 (four) poor "niggers" as we were treated in the court, was tied to such a businessman that could go to the police department and obtain information on something which shouldn't have been none of his business, according to law. This is nonsense, and there's no evidence in the entire trial record connecting the petitioner and his co-defendants with Galen Strange as mentioned earlier in the record, and Joe G. Esposito, and no evidence of petitioner and co-defendants trying to attack or bribe McCraney. None, not one iota of anything of this nature, as the State falsely paraded and preached before the Jurys.

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6. STATEMENT OF FACTS

Petitioner have begged his former attorney, Archie B. Weston Sr., since the trial and his sentence, to draw up an affidavit for him relative to the court he witnessed, (sorry) the "card", shown to him in Court from Joe G. Esposito. Counsel has refused to do so, and in addition have told a Newspaper called "Bilalian News" he was going to investigate the case. That is not true, Counsel lied. (next page)

6. STATEMENT OF FACTS, continued.

Petitioner further believes Counsel Weston has possibly been payed or threatened to "Keep his mouth shut and concern out of the case." This news article has been since March 23, 1979 and to this very day Counsel has not lived up to his telling them (Bilalian News) that he was going to investigate the case. He have blatantly lied to the public and petitioner. Simple as that.
Other news medias and papers also tried to tell the public that "Lionberg had no enemies," etc., etc., trying to rule out organized crime or the great possibility thereof and him possibly being therewith affiliated . The News Medias and papers played a major role in slandering and inflamming the public against petitioner, even told a lie of him being a reputed gang leader; and nowhere in the trial record is there any evidence or inferrences of petitioner being a gang leader or therewith connected. Petitioner believes: To win a case like this, the State, as in many cases, had to assassinate the accused's character, defame him, publicly ridicule him, and make as many lies at the trial corroborate with the lies scared by the Medias and papers.

BRIEF ARGUMENTS, POINTS AND AUTHORITIES

I. PETITIONERS'RIGHTS TO FUNDAMENTAL FAIRNESS AND DUE PROCESS, AS WELL AS EQUAL PROTECTION WAS AND HAVE BEEN PREJUDICED AND SUBJECTED TO CRIMINAL CONTEMPT BY THE FACT OF THE ILLINOIS SUPREME COURT DISREGARDING PETITIONER'S MOTION TO VACATE THE ILLINOIS ATTORNEY GENERAL FROM REPRESENTATION OF THE STATE AGAINST DENNIS WILLIAMS, AND AT THIS SUBJECT TIME THE ATTORNEY GENERAL STOOD CONVICTED OF A FELONY.

Chapter 38-Criminal Law and Procedure, states in part: A public officer or employee convicted of violating any provision of this section forfeits his office or employment. In addition, he commits a Class 3 felony. Amended by P.A. 80-922, - 1, eff. Oct. 1, 1977. Subject: Official Misconduct 33-3: (See exhibit H and other relevant exhibits)

ILLINOIS CONSTITUTION Article 1, Section 12: Right to Remedy and Justice.

ILLINOIS CONSTITUTION Article 13, Section 1: Disqualification for Public Office.

The fact of the Attorney General remaining in office, representing the State against petitioner after being convicted of tax fraud, subjected petitioner to criminal contempt of his constitutional rights under the Fourteenth Amendment of the United States Constitution, Section 1 (One) thereof and the due process clause of the Fifth Amendment of the United States Constitution, thus in addition subjected petitioner to due process discrimination and prejudice. The case was open for any desired adversity on the part of the Attorney General, and there's no proof that the Attorney General wasn't prejudice toward petitioner or didn't have adverse plans against petitioner, considering the fact that he had violated public loyalty and trust, knowingly.

II. PETITIONER IS ENTITLED TO THE APPOINTMENT OF INVESTIGATORS AND A POST CONVICTION ATTORNEY BEING THE FACT THAT HIS APPEAL COUNSELS, APPELLATE INVESTIGATOR HAVE CONSCIOUSLY DELAYED AND FAILED TO TIMELY INVESTIGATE NEW EVIDENCE AND WITNESSES ARISING IN THE CASE CHARGED AGAINST HIM.

United States v. Sisson, 399 US 267, 26 L Ed 2d 608, 90 S Ct 2117; United States v. Rachal (CA5 Tex) 473 F2d 1338, cert den 412 US 927, 37 L Ed 2d 154, 93 S Ct 2750, 2757; State v. Clayton (Or App) 504 P2d 139, held that newly discovered evidence-undercover agent had originally identified a picture of another man. A new trial was granted on this ground and the contrast of this very case and cases labor with the circumstances and facts of petitioner's.

STATE OF ILLINOIS)
) SS
COUNTY OF RANDOLPH)

A F F I D A V I T

_____ being first duly sworn according to law, upon his oath, states that:

-15-

1. That I an presently incarcerated at the Menard Correctional Center's Death Row Quarters at Box 711 Menard, Illinois 62259;

2. That this affidavit is submitted in good faith and I an the affiant-petitioner hereof;

3. That on this day, evening at approximately 5:40 p.m. , I had the occasion to tell one Sargeant Reese that I was working on an important writ to the United States Supreme Court on my case and the matter was an emergency; and that -

(see next page)

AFFIDAVIT, continued.

my petition must be submitted to this honorable Court legibly and sufficiently visible, and that this ink ribbon contained in the typewriter was too dull and worn to produce adequate visibility for the Court's observation hereof. I then told, I asked, rather, Sargeant Reese would he go upon the gallery above me and pick up a ribbon from one resident Robert Taylor. Sargeant Reese flatly stated, "No, I'm not gonna do it." I asked him to then call the Lieutenant, Captain, Duty Warden or somebody who could understand the sensitivity due this matter. He replied, "I can't do that either, man, and walked on away from me with a dirty look."

I had previously borrowed a clearer ribbon from one condemned man on my unit and had to return it to him before completion of this attached petition as he had work to do, he stated. Resident Lonnie F. Yates. Therefore I am without a clear ribbon to sufficiently submit this petition, but respectfully pray the Court bear me out and I will submit the underplaced carbon section of these foregoing proceedings for the Court's convenience in understanding and deciding on my cause. Thank you, kindly, your Honors.

WHEREFORE, the petitioner asserts his prayers under the penalty of perjury and pray for the Court's utmost considerations to petitioner's poverty, incarceration and the many malignant delimmas he face, and thereby encounters some problems in pursuing legal issues and writs on a professional level as required by the rules of this court and civil guidelines.

RESPECTFULLY SUBMITTED,

Dennis Williams

DENNIS WILLIAMS REG. NO. #C-63823
MENARD CORRECTIONAL CENTER
BOX 711
MENARD, ILLINOIS 62259

Dated: August 21 1980.

SUBSCRIBED AND SWORN TO BEFORE ME THIS
21 DAY OF August, 1980.

Thomas C Card

NOTARY PUBLIC

1-29-83

MY COMMISSION EXPIRES

Petitioner respectfully asks the Court to resume attention to his initial arguments, points and authorities pertinent to his position hereof?

Accomodated with the petitioner's argument of relation to newly arising evidence and witnesses in the case, is also the fact that that the Court's forcing Defense Counsel to trial without notice and preparation sufficiently evidences that petitioner suffered from ineffective assistance of counsel; and further resulting thereof was defense counsel could not investigate the case because had no time. The State gave defense counsel completion of discovery on the 14 of September 1978 and demanded trial that day, as the Court adversely concurred.
Had defense counsel the time to read over all the discovery material timely, he might have well found facts contained therein leading to investigation of the very facts newly discovered now and further into the case, such as the circumstances surrounding the allegation, by the State's witness Charles Macraney, of one Joe G. Esposito attempting to bribe him; what affiliation Esposito possibly had or have with the police department whom gave him McCraney's address; who was and is Galon Strange; had the deceaseds in fact, been drug informants in a case immediately prior to their deaths, against whom and was such testimony given in the same Courtroom in which Clifford Johnson and J. Scott Arthur were State's Attorneys. Defense Counsel was not afforded any opportunity to investigate these factors and or circumstances.

Waltz, Inadequacy of Trial Defense Representation as a ground for Post Conviction Review in Criminal cases, 59 Northwestern L. Rev. 289 (1964); also see United States v. Reyes-Meza de Polanco, 422 F.2d 1304 (9th Circuit 1970), cert den, 397 U.S. 1081 (1970); Atilus v. United States, 378 F2d 52 (5th Cir. 1967). Thus, the State violated discovery rules under Brady v. Maryland, correlating the defense to be forced to trial unprepared and the Court refusing defense adequate time to review discovery material.

The Court, in Keaton v. State , 273 So. 2d 385 reversed and remanded defendant to a new trial due to newly discovered evidence thereof case, which exculpated defendant and indicated a new or some other party. Further, see Michigan v. Cummings where newly discovered evidence and the prosecution working a deal with another witness, entitled defendant to a new trial, and the evidence was not cumulative in view of the fact that the defendant could now more effectively attack the credibility of the prosecution's chief witness and the outcome of the trial was entirely dependent upon testimony of chief prosecution witness, defendant was entitled to new trial on ground of newly discovered evidence which would establish his innocence.

STATE OF ILLINOIS)
) SS
COUNTY OF RANDOLPH)

AFFIDAVIT

I, Dennis Williams, being first duly sworn upon oath, according to law, deposes and states:

1. That I an currently incarcerated on Death Row at Menard Correctional Center-Box 711 - Menard, Illinois 62259;

2. That I submit this affidavit in good faith, cause and truth and that I am the petitioner in the attached petition for writ of habeas corpus - ad testificandum;

3. That I have delayed this cause too long, and it bearing the gravity as it reflects, I must bring it before this Court for its attention, immediately, or possibly a vicious mob will go judicially unnoticed killing people and the State will continue their conspiracy to murder me in the electric chair or keep me in prison for this crime, which they know I'm innocent of;

That at the present time I an unable to effectively do legal research for stronger arguments, points and authorities in my petition and I truthfully need and ask this honorable Court for an extension of time, of 30 days, to prepare additional arguments and stronger arguments, points and authorities for my petition and the relief requested. In the meantime, I'm asking this Court to appoint me an investigator of my choice, whom's name I will be able to submit to the honorable Court, approximately 2 weeks after the filing by the clerk of this petition; further, I say that an investigator would be the force by which enough facts, evidence, affidavits and witnesses would be produced and ought to convince this honorable Court, further, that Counsel should be then appointed for me, to litigate this cause further;

That an investigator is the only force of protection over the witnesses and evidence in this case newly arising. Petitioner is in prison, helpless of compulsory legal process, and is in no position whatever to effectuate the prosecution of this petition, as judicially required and more cognizable.

That I have read the contents of this entire attached petition, exhibits and this foregoing affidavit, understands such contents and states, under the penalty of perjury them to be true, except as to matters alleged and based on information, and as to those matters, affirms and states them to be true to the best of my knowledge, comprehension and understanding.

WHEREFORE, petitioner request this honorable Court to appoint, for relief, an investigator of his choosing, and further assert that relief cannot be fully stated until submission of requested legal arguments, points and authorities in an additional memorandum and proceedings which petitioner has above and is again asking an extension of time of 30 days on, to submit, Unless the Court deems further submission of arguments, etc., aren't necessary.

RESPECTFULLY SUBMITTED,

Dennis Williams

DENNIS WILLIAMS REG. NO. #C-63823
MENARD CORRECTIONAL CENTER - BOX 711
MENARD, ILLINOIS 62259

Dated: [illegible].

(See notarization on following page)

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A F F I D A V I T , continued.

RESPECTFULLY SUBMITTED,

Dennis Williams

DENNIS WILLIAMS #C-63823 - pro se

SUBSCRIBED AND SWORN TO BEFORE ME THIS

21 DAY OF August, 1980.

Thomas C Carter

NOTARY PUBLIC

1-29-83

DATE BY WHICH COMMISSION EXPIRES

C O N C L U S I O N

WHEREFORE, because of the foregoing facts petitioner is being detained and restrained of his liberty by the Respondents in violation of the United States Constitution and therefore he prays this petition be granted.

RESPECTFULLY SUBMITTED,

Dated: August 21, 1980.

Dennis Williams

DENNIS WILLIAMS REGISTER NO. #C-63823
MENARD CORRECTIONAL CENTER
BOX 711
MENARD, ILLINOIS 62259

SUBSCRIBED AND SWORN TO BEFORE ME THIS

21 DAY OF August, 1980.

Thomas C Carter

NOTARY PUBLIC

1-29-83

DATE BY WHICH COMMISSION EXPIRES

RECEIVED
OCT 24 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 80-5385

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

In Re DENNIS WILLIAMS, Petitioner,

ORIGINAL COPY

(DENNIS WILLIAMS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS
and JAMES GREER, Warden,
Illinois State Penitentiary,

Respondents.)

ON MOTION FOR LEAVE TO FILE
ORIGINAL PETITION FOR WRIT OF
HABEAS CORPUS AD TESTIFICANDUM

BRIEF FOR RESPONDENTS IN OPPOSITION

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NO. 80-5385

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

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Petitioner,

vs.

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Respondents.)

ON MOTION FOR LEAVE TO FILE
ORIGINAL PETITION FOR WRIT OF
HABEAS CORPUS AD TESTIFICANDUM

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

No opinions have been rendered as petitioner's direct appeal to the Supreme Court of Illinois is pending.

JURISDICTION

The jurisdictional requisites have been set forth in the Petition for an orginal Writ of Habeas Corpus Ad Testificandum. However, as treated more fully within the following argument, Respondents do not believe that the petitioner has shown any reason for this Court to exercise its sound judicial discretion to grant his petition.

QUESTIONS PRESENTED

1. Whether petitioner is ineligible for an original Writ of Habeas Corpus Ad Testificandum since he has exhausted neither his state nor his federal remedies and the appeal of his conviction is still pending in the Illinois Supreme Court on direct review.

2. Whether petitioner is ineligible for an original Writ of Habeas Corpus Ad Testificandum where he has shown no violation of any of his federal constitutional rights.

STATEMENT OF THE CASE

In the early morning hours of May 11,1978, petitioner Dennis William, Willie Rainge, and Verneal Jimmerson abducted Carol Schmal and Larry Lionberg from the Clark Service station in Homewood, Illinois, and brought the couple to an abandoned townhome at 1528 Cannon Lane, East Chicago Heights, Illinois. While Rainge held Mr. Lionberg downstairs, the petitioner, Jimmerson, and Kenny Adams brought Ms Schmal to an upstairs bedroom where they each raped her. Jimmerson then went downstairs and guarded Larry Lionberg while Rainge had his turn at Ms Schmal. Ms. Schmal was again raped by petitioner, Jimmerson and Rainge. After being raped seven different times, Ms Schmal was rolled onto her stomach and from a distance of a few inches, the petitioner fired two bullets into her head. The petitioner and his friends then shepherded Larry Lionberg into a nearby field and petitioner fired two bullets into Lionberg's head. Rainge took the gun and fired a bullet directly into Larry Lionberg's heart.

Subsequently, on October 20, 1978, petitioner, currently an inmate of the Illinois State Penitentiary, was convicted of the rape of Carol Schmal and the aggravated kidnapping and murders of Ms Schmal and Larry Lionberg by a jury in the Circuit Court of Cook County. Afterwards, a new jury was selected and a death penalty hearing was conducted pursuant to Ill. Rev. Stat. 1977, Ch. 38, § 9-1. On January 31, 1979, after hearing

evidence in aggravation and mitigation, the jury concluded that there was a statutory aggravating factor. The jury also concluded that there were no mitigating factors sufficient to preclude the imposition of the death penalty and determined that the defendant would be sentenced to death for the murders. Thereaften, the defendant was sentenced to death for the murders and to concurrent terms of 60 years for the rape of Carol Schmal and the aggravated kidnappings of Ms Schmal and Mr. Lionberg. (R. 5132, 5144)

Pursuant to Ill. Rev. Stat. 1977, Ch. 38, § 9-1(h), a conviction and sentence of death is subject to automatic review by the Illinois Supreme Court. On February 6, 1979, notice of petitioner's intention to appeal was filed. The petitioner is represented on his direct appeal by the Office of the Illinois State Appellate Defender. On June 21, 1980, petitioner's counsel filed in the Illinois Supreme Court a 285 page brief raising 25 separate claims of error. The appeal is presently pending before that court and the People of the State of Illinois have until December 19, 1980, in which to file their response brief and argument.

REASONS FOR DENYING MOTION FOR LEAVE TO FILE ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM

I.

PETITIONER IS INELIGIBLE FOR AN ORIGINAL WRIT OF HABEAS CORPUS AD TESTIFICANDUM SINCE HE HAS EXHAUSTED NEITHER HIS STATE NOR HIS FEDERAL REMEDIES AND THE APPEAL OF HIS CONVICTION IS STILL PENDING IN THE ILLINOIS SUPREME COURT ON DIRECT REVIEW.

By statute, the State of Illinois provides a person such as petitioner with an automatic direct appeal to the Illinois Supreme Court. Ill. Rev. Stat. 1977, ch. 38, §9-1(h). In addition, the State of Illinois provides petitioner with several remedial procedures for attacking his conviction including a post-trial motion for a new trial, a writ of error coram nobis incorporated in Ill. Rev. Stat. 1977, ch. 110, §72, a writ of habeas corpus, and a post-conviction hearing. To date, however, petitioner has pursued only the automatic direct appeal and even that he has not pursued to judgment since the appeal is still pending in the Illinois Supreme Court. Indeed, petitioner's appellate counsel on that appeal only filed his brief, a 285 page document raising 25 separate claims of error based on a 5,400 page record, in June 1980, less than 3 months before petitoner bypassed his counsel and filed the instant petition. Respondent People of the State of Illinois is still in the midst of examining the record and preparing a response to those contentions, contentions that it took petitioner's counsel 14 months to formulate. In short, petitioner has not allowed any Illinois Court any opportunity to review any contentions he might have regarding the validity of his convictions. Instead, he has bypassed his own appellate counsel, the Illinois Courts and all lower federal courts and sought an original Writ of Habeas Corpus Ad Testificandum in this Court on the basis of his claim that his brother says that he knows a "drug pusher" who claims to know who killed Carol Schmal and Larry

Lionberg. Respondents submit that until the Illinois Supreme Court or some other state tribunal has had a proper and adequate opportunity to review petitioner's claims, the instant petition should not be heard in federal court.

The axiom that federal courts should avoid preempting the state judiciary on Constitutional challenges to a state criminal conviction is well entrenched in the rules and decisions of this Court and in the applicable federal statute, 28 U.S.C. 2254. Supreme Court Rule 27.3(a) requires an original petitioner to "state the reasons for not making application to the district court," and to "set forth specifically how and wherein the petitioner has exhausted his remedies in the state courts or otherwise comes within the provisions of 28 U.S.C. 2254(b)." As the previously mentioned facts demonstrate, petitioner could neither state his reasons for avoiding the lower federal courts since there obviously are none, nor tell this Court that he has exhausted his state remedies since he has barely begun pursuing them. Moreover, petitioner has made absolutely no showing that "adequate relief cannot be had in any other form or from any other court," as required by Supreme Court Rule 27.3(a).

In Ex Parte Abernathy, 320 U.S. 219 (1943), this Court declared that in all but exceptional circumstances it would not issue writs of habeas corpus where a petitioner from a state court had not exhausted his state remedies. See also, Ex Parte Hawk, 321 U.S. 114 (1944). The decision in Fay v. Nola, 372 U.S. 391 (1963), narrowed the exhaustion principle by holding that 28 U.S.C. 2254 was "limited in its application to failure to exhaust state remedies still open to the habeas applicant at the time he filed his application in federal court." However, in a footnote, the Court elaborated by saying that the old settled principles of exhaustion still applied in cases of "presently available state remedies." 372 U.S. 435, note 43.

Subsequently, in Wainwright v. Sykes, 433 U.S. 72, 87-90 (1977), this Court abandoned the Fay deliberate bypass standard. In its

place, the Court adopted a two part "cause and prejudice" test where a petitioner is barred from habeas review of a federal claim absent (1) a showing of "cause" for the non compliance with the state procedural requirement, and (2) some showing of actual "prejudice" resulting from the alleged constitutional violation. 433 U.S. at 84, 87. Thus the requirement of exhaustion, as to those incarcerated under state authority, which is deeply "rooted in considerations of federal-state comity," Preiser v. Rodriguez, 411 U.S. 475, 491 (1973), is still very much alive since "it would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to the state courts to correct a constitutional violation." Fay v. Noia, 372 U.S. 391, 419-420 (1963).

The instant petition does not satisfy the exhaustion principle as formulated by any decision of this Court. Nor does it show any circumstance, much less an exceptional one, which would justify this Court in waiving the exhaustion requirement. Petitioner not only has numerous state remedies presently available to him, but he also has a direct appeal pending in the Illinois Supreme Court. Significantly, if petitioner allowed the Illinois Supreme Court the opportunity to consider the 25 claims of error he has presented there in his brief on direct appeal, his claim of a "drug pusher" with new evidence as justifying a collateral attack such as this petition may be irrelevant. Consequently, absent a showing of exhaustion, unavailability, or ineffectiveness of the state corrective process, United States Courts should decline to hear the petitioner. Both state and federal courts are structured into a procedural hierarchy through which cases must move in an orderly fashion. Maintenance of an effective system of justice requires that petitioner's scatter gun approach for obtaining relief be rejected in favor of the orderly system now functioning in the United States.

II.

PETITIONER HAS NOT SUFFERED ANY VIOLATION OF HIS FEDERAL CONSTITUTIONAL RIGHTS WHICH WOULD ENTITLE HIM TO A WRIT OF HABEAS CORPUS AD TESTIFICANDUM IN THIS COURT.

To justify the issuance of a federal Writ of Habeas Corpus Ad Testificandum, a state prisoner must show that his imprisonment somehow violates rights guaranteed him, by the United States Constituition. See, 28 U.S.C. 2241(c)(3); Fay v. Noia, 372 U.S. 391, 409, 412; Mathis v. Colorado, .425 F.2d 1165, 1166 (10th Cir. 1970). Respondents submit that the facts and allegations of the instant petition, taken individually or as a whole do not describe a violation of any rights of the petitioner, much less those protected by the First Ten and the Fourteenth Amendments. Taken as a whole and construed in their best light, petitioner's allegations merely imply that petitioner believes in his own innocence, that he knows somebody who claims to know a "drug pusher" who claims to know "who shot them folks" (Pet. at 3), and that his attorney was ineffective since the State brought petitioner to trial before petitioner was discharged for violation of his right to a speedy trial. These claims hardly amount to allegations that any of petitioner's federal constitutional rights were violated. In fact, petitioner does not even suggest that the evidence adduced at trial did not establish beyond a reasonable doubt that he was the leader of the gang that abducted Carol Schmal and Larry Lionberg, gang raped Ms Schmal and then executed Ms Schmal and Mr. Lionberg.

Moreover, many of petitioner's statements are false and misleading. Petitioner supposedly quotes selected passages from the transcript of pre-trial proceedings and suggests that his trial counsel was forced to trial before he was ready. However, the record in its entirety shows that when the State announced that it was ready for trial, counsel, after having previously and repeatedly demanded trial, claimed that he was not now ready to proceed in the case of petitioner's co-defendant Paula

Gray. Defense counsel, however, did not represent that he was not ready to proceed to trial on the charges against petitioner.

Further, although petitioner suggests that a "Bruton Situation" arose since his trial counsel also represented Paula Gray, what the petitioner does not tell the Court and what the record clearly shows, is that Paula Gray was tried before a different jury than was the petitioner. Therefore, Paula Gray's grand jury testimony graphically describing petitioner's role as the person who twice raped and then put two bullets into the head of Carol Schmall and who fired two bullets into the back of the head of Larry Lionberg, was not placed before the jury trying petitioner. Thus, there was no denial of petitioner's right of confrontation and no situation described as error by this Court in Bruton v. United States, 391 U.S. 123 (1968).

Finally, petitioner's suggestion that his right to fundamental fairness, due process, and equal protection was denied by "the fact of the Illinois Supreme Court disregarding Petitioner's Motion to Vacate the Illinois Attorney General [William Scott] From Representation of the State Against" him is not only specious but moot as well. First, under Illinois law, it is the State's Attorney of Cook County, Bernard Carey, and his assistants who have jurisdiction to prosecute at the trial and initial appellate level all criminal cases arising in Cook County, Illinois. Moreover, although the Illinois Attorney General has primary jurisdiction to represent the State in criminal matters before the Illinois Supreme Court, as in most other criminal matters arising in Cook County, the Attorney General has conferred on the Cook County State's Attorney the right to represent the State in both this Court and the Illinois Supreme Court in matters involving the instant petitioner. Second, on July 29, 1980, more than 1 month before the instant petition was filed, Tyrone C. Fahner ascended to the Office of the Illinois Attorney General. Therefore, any claim that petitoner might have had regarding the representation of the State in this matter by William Scott as

Attorney General was and is moot. Third, except for his unsupported claim, petitoner has shown no manner in which the representation of the State of Illinois by William Scott as Attorney General has in any way denied petitioner any right guaranteed by the United States Constitution.

CONCLUSION

For the reasons stated herein, Respondents request that the motion for leave to file an original petition for Writ of Habeas Corpus Ad Testificandum be denied.

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